

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL JEROME HUNT,

Defendant-Appellant.

UNPUBLISHED

June 24, 2003

No. 238492

Jackson Circuit Court

LC No. 00-006500-FH

Before: Sawyer, P.J., and Meter and Schuette, JJ.

PER CURIAM.

Defendant appeals as of right his jury conviction for possession with intent to deliver less than 50 grams of cocaine. MCL 333.7401(2)(a)(iv). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E)(1)(b).

I. FACTS

Defendant Michael Jerome Hunt was convicted by a jury of possession with intent to deliver less than 50 grams of cocaine in violation of MCL 333.7401(2)(a)(iv). At trial, State Trooper Dave Stamler testified that he executed a search warrant for 909 Burr Street in Jackson. When the police approached the house they heard a woman yelling, "Here they come." Sergeant Kevin Hiller testified that as the police entered the house, they ran upstairs where two men, the defendant and his friend Germonte Gaither, were huddled around a flushing toilet. Hiller then reached into the toilet and pulled out a bag containing what appeared to be crack cocaine. State Police forensic scientist Jeffery Rosenthal testified that the substance in the bag was cocaine weighing 13 grams. Defendant was arrested and police found \$1,647 in his possession.

At trial, defendant presented Gaither, who testified that the two were merely at the house to use drugs. Gaither also stated that Robin Givens, the woman running the drug house, threw the drugs in the toilet.

II. STANDARDS OF REVIEW

In reviewing the sufficiency of the evidence, this Court must view the evidence de novo in the light most favorable to the prosecutor and determine whether a rational trier of fact could

find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

Claims of instructional error are reviewed de novo. *People v Hall*, 249 Mich App 262, 269; 643 NW2d 253 (2002).

III. ANALYSIS

A. Sufficiency of the Evidence

There was sufficient evidence to show that defendant possessed cocaine. Possession may be joint, with more than one person actually or constructively possessing the substance. *Wolfe, supra*, 520. Evidence that defendant had the right to exercise control over the cocaine and knew that it was present is sufficient to establish constructive possession. *Id.* Where defendant and another man were found huddled over a flushing toilet that contained a bag of drugs, a reasonable juror could conclude that defendant possessed the cocaine.

B. Jury Instruction

An aiding and abetting instruction is proper where there is evidence that more than one person was involved in the commission of a crime and the defendant's role in the crime may have been less than direct participation in the wrongdoing. *People v Head*, 211 Mich App 205, 211; 535 NW2d 563 (1995). Where defendant claimed that the drugs did not belong to him, he would be guilty of aiding and abetting if he assisted in concealing or disposing of the drugs. *People v DeLeon*, 110 Mich App 320, 325; 313 NW2d 110 (1981), rev'd on other grounds, 414 Mich 851; 322 NW2d 173 (1982). Where three people were in a house that is known to police as a drug house and are on the lookout for police, and where defendant was near a toilet that is being used to dispose of narcotics, the trial court did not err in issuing an aiding and abetting instruction.

C. Lesser Included Offense

Defendant argues that he should merely be issued a ticket for frequenting a drug house because a woman that came to the house to purchase drugs shortly after police arrived was just ticketed. MCL 768.32 only permits consideration of necessarily included lesser offenses and not cognate lesser offenses. *People v Cornell*, 466 Mich 335, 354; 646 NW2d 127 (2002). Therefore, the court did not err in declining to instruct the jury on the cognate lesser offense of frequenting a drug house.

Affirmed.

/s/ David H. Sawyer
/s/ Patrick M. Meter
/s/ Bill Schuette